STATE OF MICHIGAN

COURT OF APPEALS

ROBERT J. ROEHRIG,

Plaintiff-Appellee,

v

STATE AUTO MUTUAL INSURANCE CO.,

Defendant-Appellant.

UNPUBLISHED
July 5, 2005

No. 252742
Oakland Circuit Court
LC No. 2002-038111-CK

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from an order of judgment awarding plaintiff damages pursuant to two appraisal awards in this homeowner's insurance case. We affirm.

On February 6, 2002, plaintiff filed a complaint against defendant averring that defendant rejected his proof of loss on claims under his homeowner's policy for water and fire damage submitted in 1999 and 2000, and then refused his demand for appraisals under MCL 500.2833(1)(m). Plaintiff requested that the court appoint an independent umpire, in conformity with the policy of insurance and MCL 500.2833(1)(m), for the purpose of appraising the property losses because defendant refused to appoint an appraiser or participate in the appraisal process.

On January 27, 2003, the trial court entered an order appointing an umpire, Bryan Levy, a former district court judge. Thereafter, the contractual and statutory appraisal process was completed and the umpire issued two awards—one for the water damage that occurred primarily to the upper level of the house and one for the fire damage that occurred primarily to the lower level of the house—and they were signed by plaintiff's appraiser and the umpire. Defendant failed to pay the amounts awarded and plaintiff sought entry of judgment against defendant in the amount of the awards. Defendant responded by claiming that the awards were erroneous because they were duplicate awards and filed a motion to modify or set aside the appraisal awards.

In response to defendant's motion, plaintiff argued that defendant delayed the matter for over three and one-half years, did not object during the six month appraisal process, and sought to attack the awards only because of dissatisfaction with the outcome. Plaintiff attached the umpire's affidavit to his response which indicated that, after an extensive appraisal process that included review of voluminous documents, he purposely issued two appraisal awards regarding

the water and fire losses. Umpire Levy further indicated that, because extensive mold remediation was required, repair of the home would cost more than its demolition and rebuilding so his appraisal awards were based on a tear down and rebuild of the premises.

After hearing oral arguments, on October 22, 2003, the trial court entered its order denying defendant's motion to modify or set aside the appraisal awards, holding that there was no evidence that "the Umpire made a mistake or had less than a full understanding of the facts and circumstances presented by both parties." On November 19, 2003, an order of judgment was entered by the trial court awarding plaintiff the damages provided in the appraisal awards, $883,133.42, as well as interest. Defendant appeals.

Defendant first argues that his motion to modify or set aside the appraisal awards should have been granted due to a manifest mistake because the umpire awarded total loss damages for both the tear down and rebuild related to the fire, as well as total loss damages for the tear down and rebuild related to the earlier water incident. We disagree. The appraisal process for determining the amount of loss for insurance claim purposes is a common-law arbitration procedure. *Manausa v St Paul Fire & Marine Ins Co*, 356 Mich 629, 633; 97 NW2d 708 (1959); *Thermo-Plastics R & D, Inc v General Acc Fire & Life Assurance Corp, Ltd*, 42 Mich App 418, 422; 202 NW2d 703 (1972). Judicial review of the appraisal award is limited to instances of bad faith, fraud, misconduct, or manifest mistake. *Auto-Owners Ins Co v Kwaiser*, 190 Mich App 482, 486; 476 NW2d 467 (1991).

We are guided by the long-standing principles applicable to the appraisal process, including that it is considered "a substitute for judicial determination" and "a simple and inexpensive method for the prompt adjustment and settlement of claims." See *Themo-Plastics R & D, Inc*, *supra* (citation omitted). And,

> there are great objections to any general interference by courts with awards. They are made by a tribunal of the parties' own selection, who are, usually at least, expected to act on their own view of law and testimony more freely and less technically than courts and regular juries. They are also generally expected to frame their decisions on broad views of justice, which may sometimes deviate from the strict rules of law. It is not expected that after resorting to such private tribunals either party may repudiate their actions and fall back on the courts. And equity, on whatever pretext it may intervene in such cases, does so upon the reason that the tribunal has not really acted within the lines of the duty laid upon it, and has not in fact carried out the agreement under which it has obtained authority to proceed. [*Davis v National American Ins Co*, 78 Mich App 225, 234-235; 259 NW2d 433 (1977), quoting *Port Huron & Northwestern R C v Callanan*, 61 Mich 22, 26; 34 NW 678 (1887).]

Here, defendant claims manifest mistake warrants reversal but, like the trial court, we disagree. Two appraisal awards were issued related to two separate insurance claims filed by plaintiff. The first was for water damage sustained by the upper floor of plaintiff's house in January of 1999, and the second was for the fire damage to the lower floor of plaintiff's house in July of 2000. Plaintiff did not claim that the house was a total loss from the water damage. Apparently because the damage from both incidents was not promptly repaired, the house required extensive mold remediation by the time of the appraisal process such that demolition

was the more economical option. Umpire Levy indicated in his affidavit that the damage was extensive and, as noted in the oral argument on the motion, the losses from both incidents overlapped. In other words, there were not two total losses to the one house; rather, there were two losses, one to the upper level and one to the lower level, that combined to cause a total loss. There was no manifest mistake in the appraisal awards.

Next, defendant argues that the appraisal awards should be set aside or modified because of umpire misconduct since defendant was not "permitted by the umpire to present evidence or participate equally in the appraisal process." We disagree. Defendant's claims, including that its appraiser was not provided with copies of materials presented by plaintiff's appraiser to the umpire, that there was an improper ex parte meeting between the umpire and plaintiff's appraiser, and its objection to the umpire's method of determining the amount of loss, are either unsubstantiated or do not establish the requisite unfairness and bias necessary for judicial interference with the appraisal proceedings. See *Emmons v Lake States Ins Co*, 193 Mich App 460, 466-467; 484 NW2d 712 (1992); *Davis*, *supra* at 232-235.

Next, defendant argues that the appraisal awards should be set aside "for the fraud, misconduct, and bad faith of the [plaintiff's] appraiser." We disagree. Defendant's claim is premised on the alleged issuance of an erroneous double award for the same loss. As discussed above, there was no manifest mistake in the appraisal awards.

To the extent that defendant further challenges the umpire's authority and the calculation of the awards in the argument section of its brief, such issues are waived because they were not raised in the statement of the questions involved in this appeal. See MCR 7.212(C)(5); *Bruley v Birmingham*, 259 Mich App 619, 631-632 n 28; 675 NW2d 910 (2003). In any event, the issues are without merit. An appraiser and the umpire determined and "set the amount of the loss" by written agreement. MCL 500.2833(1)(m). We cannot reconstruct this appraisal proceeding and will not attempt to recalculate the amount of loss through speculative means so as to defeat the purpose and effect of the appraisal process. See *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982); *Davis*, *supra* at 237-238; *Themo-Plastics R & D, Inc*, *supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh